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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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In the Matter of

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Amendment of the Commission's  
Rules to Establish New Personal  
Communications Services

)  
) General Docket No. 90-314  
) RM-7140, RM-7175, RM-7618  
)

To: The Commission

**COMMENTS OF MEDIA ACCESS PROJECT  
AND  
PEOPLE FOR THE AMERICAN WAY**

Media Access Project and People for the American Way ("MAP/PFAW") respectfully submit these comments in support of establishment of a spectrum set aside for exclusive auction among small businesses, women and minority-owned enterprises and rural telephone companies seeking to establish broadband personal communications services (PCS). The Commission can, and should, protect the integrity of this program by adopting a firm anti-trafficking rule of at least three years' duration for those who succeed in constructing broadband PCS systems with the benefit of this set aside.

Establishment of a set aside will be a futile, and perhaps even counterproductive, exercise unless the reservation is meaningful in size and utility. Thus, while MAP/PFAW take no position at this time as to the exact amount of bandwidth that should be included in such a set aside, they do call for the Commission to insure that such a set aside be of sufficient size and frequency to assure that the promised opportunity is not merely illusory. For the same reason, MAP/PFAW urge that the Commission adopt minimum financial commitments and flexible financial arrangements for such entities to pay for these PCS licenses.

The availability and cost of capital have proven to be insurmountable obstacles to meaningful participation in telecommunications businesses on the part of small businesses, women and minority-owned enterprises and rural telephone companies. Use of a set aside mechanism is the best way to insure that such groups can attract investment capital at market rates. The presence of larger, deep-pocketed bidders virtually guarantees that lenders and investors will not wish to assist smaller ventures in the absence of mandated incentives.

In advocating exercise of the Commission's statutory authority to establish set asides for

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broadband PCS, *see* The Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, §6002(b), 107 Stat. 312, 392 (1993) (the "Budget Act"), MAP/PFAW wish to stress that the purpose of this program should *not* be to confer windfall benefits. One valid criticism of certain FCC broadcast ownership policies, including policies unrelated to minority ownership, has been that licensees have often been allowed to "flip" their properties for quick capital gains. These licensees may then reinvest in other economic sectors.<sup>1</sup> Such practices frustrate the goal of creating incentives for increased ownership among certain historically underrepresented categories.

The statutory objective of the Budget Act is enfranchisement; this cannot be fulfilled unless bidders are required to retain their properties long enough to become part of the telecommunications infrastructure. Thus, to protect the integrity of the set aside program, those who succeed in building and constructing broadband PCS systems using spectrum which has been set aside for historically underrepresented classes should be subjected to a firm three year holding period<sup>2</sup> prior to being allowed to transfer control to others.<sup>3</sup>

Notwithstanding certain objections which have been raised, the constitutionality of such congressionally authorized set asides is well established. *Metro Broadcasting Inc. v. FCC*, 102 S. Ct. 2997, 3009 (1990).<sup>4</sup> The set aside program would further advance important constitu-

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<sup>1</sup>In particular, the Commission's policies favoring applicants promising local owner-operation of new broadcast facilities has been criticized because of the absence of a mandatory holding period. *See Bechtel v. FCC*, 10 F.3d 875 (D.C. Cir. 1993).

<sup>2</sup>The period would begin upon the date that the system begins operation and would be waivable only upon good cause shown.

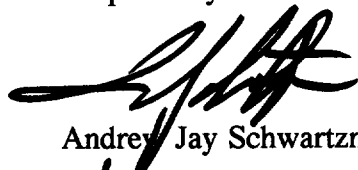
<sup>3</sup>In considering waiver applications, the Commission may wish to take into account a commitment that the proceeds of an otherwise premature sale will be reinvested in telecommunications entities, especially if they provide mass media services.

<sup>4</sup>*Metro* is a broadcasting case. Broadband PCS is presently conceived as a common carrier service; such operators will not, and should not, have any role in the content of information carried on their systems. However, the nature of the emerging technology surely permits the Commission to predict the eventual development of mass media services using the same spectrum. In those new services, licensees would function more like broadcasters than common carriers, with concomitant Title III-type obligations.

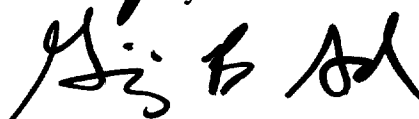
tional objectives if the Commission were to condition the sale of these authorizations upon the reinvestment of sale proceeds in mass media services. *See* footnote 3, *supra*. As an entirely separate matter, the Commission can also find that historic exclusion of certain classes of owners from providing governmentally licensed and franchised common carrier communications services justifies remedial action in the establishment of an auction scheme. *Fullilove v. Klutznick*, 448 U.S. 448 (1980).

Congress has given the Commission the power to enhance diversity and democracy while expediting the establishment of a new form of telecommunications technology. The Commission should take full advantage of this opportunity.

Respectfully submitted,

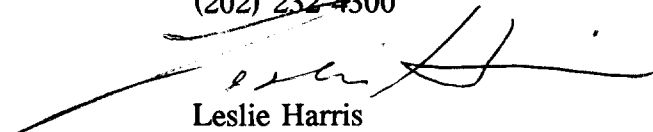


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